

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WAYNE BERRY,

Plaintiff,

vs.

DEUTSCHE BANK TRUST COMPANY
AMERICAS (FKA BANKERS TRUST
COMPANY) and JP MORGAN CHASE
BANK in their separate capacities and as
agents for the pre- and post-petition lenders of
Fleming Companies, Inc.; GENERAL
ELECTRIC CAPITAL CORPORATION;
C&S WHOLESALE GROCERS, INC.; THE
POST-CONFIRMATION TRUST OF
FLEMING COMPANIES, INC.; ROBERT
KORS; CORE-MARK HOLDINGS INC. and
DOES 1 to 200,

Defendants.

Case No. 01:07 CV 7634 (WHP)

ECF Case

REQUEST FOR JUDICIAL NOTICE AND APPENDIX OF EXHIBITS IN
SUPPORT OF THE PCT'S AND ROBERT KORS' MOTION FOR SUMMARY JUDGMENT

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Counsel for Defendants Post Confirmation
Trust and Robert Kors

Defendants PCT and Robert Kors (collectively, “Defendants”) respectfully ask this Court to take judicial notice of the following documents, which are included as exhibits to this Request, for purposes of assessing the Defendants’ motion for summary judgment and motion to require Plaintiff to post a security bond. At any stage of a proceeding, a court may take judicial notice of adjudicative facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201.

1. Exhibit A attached hereto is a true and correct copy of the Order Directing Joint Administration dated April 3, 2003 from the Delaware Bankruptcy Court.¹
2. Exhibit B attached hereto is a true and correct copy of the Order Confirming the Plan of Reorganization dated July 26, 2004 from the Delaware Bankruptcy Court.
3. Exhibit C attached hereto is a true and correct copy of the Notice of the Effective Date of the Plan of Reorganization dated August 23, 2004 from the Delaware Bankruptcy Court.
4. Exhibit D attached hereto is a true and correct copy of Fleming Companies, Inc.’s Plan of Reorganization, which was approved by the Delaware Bankruptcy Court on July 26, 2004 (without exhibits).
5. Exhibit E attached hereto is a true and correct copy of the Case Information Screen from the divorce proceeding in Hawaii state court involving Wayne Berry and his wife, as found on a Hawaii State Judiciary court website on February 25, 2008.

¹ All references to the Delaware Bankruptcy Court are to Fleming’s bankruptcy action, *In re Fleming Companies, et al.*, Case No 03-10945 (MFW), which Fleming filed in the Bankruptcy Court for the District of Delaware on April 1, 2003.

6. Exhibit F attached hereto is a true and correct copy of a Judgment dated March 9, 2006 from the Second Fleming/Berry litigation.²

7. Exhibit G attached hereto is a true and correct copy of the March 9, 2006 Order Denying Motion for Permanent Injunction from the Second Fleming/Berry litigation.

8. Exhibit H attached hereto is a true and correct copy of the March 2, 2007 Order Adopting and Modifying the Report of Special Master regarding motions for attorneys' fees and costs from the Second Fleming/Berry litigation.

DATED: February 26, 2008

By: /s/ Richard L. Wynne
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² All references to the Second Berry/Fleming litigation are to *Wayne Berry v. Hawaiian Express Services, et al.*, Civ. No. CV 03-00385 SOM-LEK, which Berry filed in the District of Hawaii in July 2003.